

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	01 C 6855	DATE	10/5/2001
CASE TITLE	Laborers' Pension Fund vs. King & Larsen		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. The current answer is stricken in its entirety, with leave granted to file a proper Amended Answer in this Court's chambers on or before October 19, 2001.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	courtroom deputy's initials	SN	Date/time received in central Clerk's Office	number of notices	Document Number 4
				OCT 09 2001 date docketed	
				CM docketing deputy initials	
				10/5/2001 date mailed notice	
				SN mailing deputy initials	

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

OCT 09 2001

LABORERS' PENSION FUND,
et al.,

Plaintiffs,

v.

KING & LARSEN CONSTRUCTION, INC.,
et al.,

Defendants.

No. 01 C 6855

MEMORANDUM ORDER

King & Larsen Construction, Inc. and M.A. King Construction, Inc. have filed a purported Answer to the ERISA Complaint brought against them by two employee benefit funds ("Funds"). This memorandum order is issued sua sponte to require the correction of defense counsel's disregard of the plain language of the second sentence of Fed. R. Civ. P. ("Rule") 8(b).

That sentence could scarcely be written in more straightforward English, and it identifies exactly what any defendant must disclaim to get the benefit of a deemed denial of a plaintiff's allegations (see also App. ¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001)). So it is understandably annoying when lawyers disregard that plain directive and tender a responsive pleading that is shot through with departures from that language that do not reveal whether, in the objective good faith demanded by Rule 11, a defendant can indeed meet the demanding standards so carefully

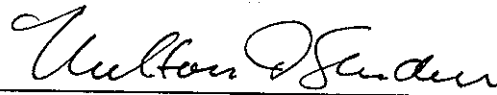
prescribed by the Rule--in this instance, Answer ¶¶3, 4, 6, 10 through 18, 20 through 23 and 28 through 30 are deficient on that score. Indeed, it is more than doubly annoying when less than two weeks ago the selfsame lawyer, acting for the selfsame clients, had his attention called expressly to the State Farm v. Riley Appendix in connection with his unfamiliarity with still another fundamental principle of federal pleading.¹

Under all of the circumstances one aspect of the response does seem a bit ironic: Defense counsel's website begins with the self-evaluation of "LegalStrongMinds." In any event, the current Answer is stricken in its entirety, with leave granted to file a proper Amended Answer in this Court's chambers (with a copy of course to Funds' counsel) on or before October 19, 2001.

As was true in Case No. 01 C 2919, no charge is to be made to defendants by their counsel for the added work and expense incurred in correcting counsel's own errors. And this time defense counsel are ordered to apprise their clients to that effect by a letter accompanied by a copy of this opinion, with a copy of the letter to be transmitted to this Court's chambers as

¹ See this Court's September 26 memorandum order in Cement Masons Pension Fund v. King & Larson, No. 01 C 2919. And in that respect defense counsel may be assured, despite what this Court's secretary reported as to the nature of his insolent telephonic inquiry on receipt of that order, that this Court is not "sick" because it regards conformity to the Rules as the responsibility of any lawyer who seeks to practice in federal court. Those who live in glass houses surely ought to refrain from throwing stones.

an informational matter (not for filing).



Milton I. Shadur
Senior United States District Judge

Date: October 5, 2001